

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

VITAMIN RESEARCH PRODUCTS, INC.,  
Debtor.

Case No. 91-56061-MM  
Chapter 11

DURK PEARSON and SANDY SHAW,  
Plaintiffs,

Adversary No. 92-5343

vs.

**MOTION TO AMEND COMPLAINT**

VITAMIN RESEARCH PRODUCTS, INC.,  
Defendant.

**FACTS**

The original complaint seeks damages for breach of contract and libel and an injunction against the debtor's further use of the plaintiffs' products and mailing list. The proposed amendment seeks to add four subsequently-discovered claims for relief for: 1) violation of the licensing agreement by revealing the formulations to third parties; 2) misappropriation of trade secrets by manufacturing and marketing derivative or identical products; 3) violation of the mailing list use agreement by revealing plaintiffs' mailing list to third parties; and 4) misappropriation of plaintiffs' mailing list for the debtor's own use. The debtor-defendant objects to the amendment on the bases that the amendment is mooted by the Court's earlier ruling denying the plaintiffs' motion for an order finding contempt, and that it is futile because it does not state a claim for relief.

DISCUSSION

Fed. R. Civ. P. 15(a) provides that after a responsive pleading has been filed, a party may amend a pleading only by leave of court, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(d) authorizes the supplementation of a pleading to set forth transactions, occurrences, or events which have happened since the date of the original pleading. The purpose is to promote as complete an adjudication of the dispute between the parties as is possible. LaSalvia v. United Dairymen of Arizona, 804 F.2d 1113, 1119 (9th Cir. 1986). The discretion exercised in deciding whether to grant leave to amend or to supplement is similar, and the formal distinction is not significant. Lewis v. Knutson, 699 F.2d 230, 239 (5th Cir. 1983).

Further, Fed. R. Civ. P. 15(c) permits an amended pleading to relate back to the date of the original pleading if the assertions in the amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading. The purpose of this provision is to ensure proper notice to the defendant of the claims against him. Andujar v. Rogowski, 113 F.R.D. 151, 155-56 (S.D.N.Y.)

The reasons that a court may deny a motion for leave to amend include undue delay, bad faith, prejudice to the opposing party, or the futility of the amendment. Id. at 154. A supplemental pleading based upon subsequent events may be permitted when it would be convenient to litigate all the claims between the parties in the same action. Keith v. Volpe, 858 F.2d 467, 474 (9th Cir. 1988).

The Court finds that the interests of justice would be served by allowing the supplementation to the complaint in this case. The reasons for denying the relief requested are not present. The debtor is not prejudiced by the allowance of the supplement because the purpose of proper notice is not defeated here. The new claims for relief appear to be based on and related to the claims asserted in the original petition. Further, the issues are not mooted by the Court's order denying the plaintiffs' application for an order of contempt. That order, which was signed after the parties stipulated to the terms of a preliminary injunction, merely states that the evidence was insufficient for a finding that the temporary restraining order had been violated. It did not state that the plaintiffs had no claims for relief.

Therefore, the motion to amend complaint is granted.